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COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 14 of the provisional agenda

EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO UNITED NATIONS HUMAN RIGHTS INSTRUMENTS

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[11 February 1998]

GE.98-10646 (E)

Composition of the treaty bodies: Independence, competence and geographical representation

1. The six principal human rights treaties now have 900 ratifications. Although this falls short of the Vienna Declaration's goal of universal ratification, it nonetheless places formidable demands on the treaty bodies charged with monitoring the human rights treaty system. Within any five year cycle of periodic reporting, some 900 country reports should be reviewed by treaty bodies. Each review requires Committee members to familiarize themselves with the essential elements of the report, verify these against other available information, and apply not only the provisions of the treaty but also the Committee's own general comments and other jurisprudence. In addition, communications - in a range of languages - from individuals asserting violation of their treaty rights by State parties must be considered. These tasks fall to the treaty body members, who typically meet for six or eight weeks a year, who are essentially unpaid, and to whom the United Nations provides only the most nominal administrative support and virtually no information resources.

2. While the imbalance between the human and other resources of the treaty bodies and their role as the guardian and cornerstone of the treaty implementation system is not new, it is becoming more acute as the number of States parties increases: the 10 members of the Committee on the Rights of the Child now monitor the application of the Convention on the Rights of the Child in 191 countries. Although this situation is being given increased recognition, it has not led to a consensus as to its resolution. Some commentators believe the solution lies in a consolidation of the system, moving incrementally towards a situation in which a single monitoring body would oversee State reporting under all six treaties. Others see this proposal as unrealistic or fear it would weaken the existing system. But, whatever the merits, major changes cannot be made immediately. The urgent need is therefore to improve the existing system and bring it closer to the system envisaged by the treaties.

3. This situation has long been a source of concern to the Lawyers Committee on Human Rights. We have watched as the demands placed on the treaty monitoring system expanded, with no significant increase in resources, or regular review of Committee working methods, or creative thinking about how independence, competence and geographical representation could be ensured in nomination and election procedures that each involve over 100 State parties. This contrasts sharply to the seriousness with which comparable issues are being addressed in the United Nations discussions of an International Criminal Court.

4. We therefore welcome recent steps by the Chairpersons, and some committees, to address these problems. But we believe further change is urgently needed in five principal areas:

(a) An increase in the resources available to the Committees;

(b) Remuneration of members to remove the present de facto financial requirement for candidates;

(c) The election of members who are more geographically representative of the States parties;

(d) The adoption of transparent procedures within the Committees to ensure impartiality and independence in their methods of work; and

(e) The adoption of new procedures to facilitate the nomination of candidates who are "independent" and "expert".

Resources

5. The treaties require the United Nations to provide "the necessary staff and facilities for the effective performance of the functions" of the Committees. This has not been done, and many Committee members must rely on their own resources, supplemented by information from non-governmental organizations. In any national system, it is axiomatic that adequate resources are needed for a judicial or quasi judicial body to perform its functions effectively. The same should be true for the United Nations.

6. We believe that the Office of the High Commissioner should undertake a needs assessment; each Committee should be asked to identify what it requires in order to function effectively in terms of, for example, information, research capacity, language skills and travel.

Honoraria/remuneration

7. Members are paid their expenses for attendance at meetings. Some treaties also provide for "emoluments" from the United Nations. But others do not. Those "emoluments" are not high - currently $3,000 for two full months [and often more] of Committee work a year. Aside from the inequity of having two different "regimes", the present system effectively encourages the election of members who have personal means, or government or other employment, which allow them to devote a substantial amount of essentially unpaid time to United Nations work. Inevitably, this has a negative and disproportionate effect on candidates from poorer countries and so on the representative character of the elected members.

8. We believe that honoraria, set at an appropriate level, should be paid to all treaty body members.

Representation

9. The General Assembly recently underlined to States parties the importance of ensuring that the committees have an "equitable geographical distribution of membership" and are representative of the principal legal systems. This is a sensible provision since it is self-evident that a monitoring system will be more effective and carry more authority if it contains members who are familiar with the particular social, legal, and cultural characteristics of a country or region under review. But in practice the composition of some Committees is not representative of the States parties. The problem presents itself in acute form in the case of the Human Rights Committee whose African members are from Egypt and Mauritius, and which has no member from the 38 States parties of sub-Saharan Africa.

10. We encourage States parties to solicit regularly from the Chairpersons reviews on the composition of the treaty bodies, notes on any major geographical imbalances, and advice before each election.

Impartiality and independence

11. Treaty bodies are not courts in the strict sense of the term, but as quasi judicial bodies they deal with equally complex - and often more sensitive - matters of law and fact. If they are to be effective, the Governments whose actions they criticize or endorse, and the individuals who are affected by their findings, must accept the treaty bodies as authoritative interpreters of international law. But their work is little reported, and is rarely known beyond the handful of government officials and NGOs who attend a particular session. The authority of the Committees therefore depends on the impartiality, independence and competence of their elected members. This means that members must therefore not only be impartial and independent, but must also be seen to be so. Independence will be put in question where a member is also a government official, and the appearance of impartiality will be placed in jeopardy if a member participates in the review of his or her own country's report.

12. The importance of this issue is now being recognized. In 1996, the treaty body chairpersons advised that members should refrain from participating in any aspect "of the consideration of the reports of the States of which they are nationals, or communications or inquiries concerning those States" (A/51/482, para. 29). The Human Rights Committee developed this principle in the recently (November 1997) adopted and useful Guidelines on independence and impartiality entitled "Human Rights Committee Guidelines for the exercise of their functions by members". In 1997, the Chairpersons turned their attention to the members' independence, and advised States parties that they "should refrain from nominating or electing ... persons performing political functions or occupying positions which were not readily reconcilable with the obligations of independent experts" (A/52/507, para. 68). The Human Rights Committee Guidelines go further in stating:

> "The appearance of impartiality of members of the Committee should not be affected by their connection with Governments. They should abstain from engaging in any functions or activities which may appear to be not readily reconcilable with the obligations of an independent expert under the Covenant. Members should abstain from participating in any political body of the United Nations [...] They should also abstain from acting as experts, consultants or counsels for any Government that might come up for consideration before the Committee."

Limits are also placed on relevant NGO activity by members.

13. We believe that States parties should no longer nominate or vote for ministers, senior officials and ambassadors.

Procedures for the nomination and election of independent experts

14. We are well aware that all these problems are accentuated by a shortage of qualified nominees for election. States parties may wish to elect members

from a particular region, but in the absence of qualified candidates there is little they can do. This is a general problem, and is not restricted to the United Nations treaty bodies. The recent growth of international legal and human rights institutions has not been matched by innovative procedures which enable the international community to identify qualified candidates. States parties should recognize this and take positive steps to expand the pool of qualified nominees. The Committees should be asked to record what qualifications/professional skills they would find useful in new members; States parties should consult with appropriate sectors of their societies (national legal, medical, academic, women's, children's and other non-governmental institutions) for names of suitable candidates; when they nominate candidates, they should do so on standard form curricula vitae that are drafted in such a way that a candidate's relevant experience is easily identifiable. It may be that some screening mechanism would also be helpful.

Recommendation

15. The Lawyers Committee for Human Rights encourages the Commission on Human Rights to mandate the Office of the High Commissioner to review, in consultation with the Chairpersons, the present nomination and election system, and recommend solutions to this problem, which is experienced by all regional and international human rights systems. We recommend that the Office take into account the experience of other United Nations and regional organizations, including that of the recently expanded Council of Europe.

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[11 February 1998]

GE.98-10649 (E)

The situation of human rights in Northern Ireland

1. The peace talks in Northern Ireland are at a critical juncture. The divisions in Northern Ireland are deep, and compromises on the ultimate political questions will be very difficult to reach. The Lawyers Committee for Human Rights believes that human rights violations were central in creating this conflict, and their termination remains essential to its successful resolution. Measures that would enhance human rights protection can build confidence on all sides, and allow the wider work of determining agreed political structures to take place.

2. Dr. Marjorie Mowlam, the Secretary of State for Northern Ireland, addressed this point in a speech in New York in November 1997. She said:

> "We all have a responsibility to help build trust and confidence where we can. Northern Ireland needs guaranteed human rights. People there want to feel secure and confident. Civil rights abuses helped start the current troubles, and I hope guaranteeing basic human rights will help end them. As a major step we will be bringing the European Convention of Human Rights in law in Britain and Northern Ireland for the first time. And we are encouraging the parties to the talks to develop for themselves a home-grown bill of rights".

3. Some have argued that the resolution of these issues should await - and will flow inexorably from - resolution of the larger political impasse. The Lawyers Committee for Human Rights believes the opposite is true. For the parties to be willing to compromise their positions relating to political control and power, they must do so from a position of confidence that their basic rights will ultimately be protected.

4. The Lawyers Committee for Human Rights urges members of the Commission to focus on four areas:

(a) The emergency legal regime in Northern Ireland should be brought into line with principles of international law. A process should be set in place now that will lead to the repeal of emergency legislation. As we have noted in the past, emergency powers in Northern Ireland have been linked to serious human rights violations, fueling and exacerbating the conflict rather than facilitating its resolution. Basic due process rights continue to be denied to citizens in Northern Ireland. Trials involving those charged with security offences are subject to special procedures that lower standards of admissibility for evidence, limit access to bail and extend pre-charge detention in contravention of international standards.

(b) As the United Kingdom Government moves to incorporate the European Convention of Human Rights into domestic law, it should both withdraw its derogation from article 5 (3) of the Convention and comply with the judgement of the European Court of Human Rights in the Murray case (February 1996) which found that the Government was in breach of the right of fair trial because of restrictions on the right to legal advice and the effective removal of the rights to remain silent during interrogation.

(c) The United Kingdom Government should encourage the widest possible consultation with civil society with respect to the content and enforcement of a Bill of Rights. The Government should also draw on international experts to advise on the content, articulation and promotion of a Bill of Rights for Northern Ireland.

(d) The United Kingdom Government should be encouraged to initiate a review of miscarriages of justice cases, including the 1989 murder of Patrick Finucane. The Lawyers Committee for Human Rights welcomes the recently announced judicial inquiry into the killing of 14 unarmed marchers in Londonderry in January 1972. In announcing the creation of a three-judge international panel Prime Minister Blair said, "Bloody Sunday was a tragic day for all concerned. We must all wish it had never happened. Our concern now is simply to establish the truth and close this painful chapter once and for all".

5. The United Kingdom Government's welcome action in this case establishes an important precedent that it should now apply to other cases as well. Specifically, it should initiate an independent public inquiry into the murder of prominent defense lawyer Patrick Finucane in his home in 1989. In 1992 a call for an independent inquiry in this case was made at the Sub-Commission on the Prevention of Discrimination and Protection of Minorities by Professor Claire Palley, the independent expert nominated by the Government of the United Kingdom. Last fall, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Mr. Cumaraswamy, visited Northern Ireland. In preliminary observations at the end of his visit he reiterated the call for an independent inquiry on the Finucane case.

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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[11 February 1998]

GE.98-10652 (E)

The case of the Special Rapporteur on the independence of judges and lawyers, and the need to strengthen the special procedures system of the Commission on Human Rights

1. The Lawyers Committee for Human Rights expresses its serious concern at the Malaysian Government's failure to ensure the legal immunity of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Param Cumaraswamy. Four actions for libel and defamation have been brought against Mr. Cumaraswamy in the Malaysian courts. These actions relate to statements he made to the London-based magazine International Commercial Litigation regarding his inquiries into the Malaysian judicial system; over US$ 100 million is being sought in damages. The Lawyers Committee is concerned that the charges brought against the Special Rapporteur (a) violate his immunity under international law, and (b) have the effect of obstructing his continuing ability to conduct his Commission-mandated investigation into attacks on the independence of the judiciary worldwide.

2. In the first lawsuit, Mr. Cumaraswamy petitioned the High Court of Malaysia for immunity from all legal proceedings pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations which states (Section 22):

> "[E]xperts ... performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions ... In particular, they shall be accorded ... in respect of words spoken and written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind."

In support of the petition, he brought to the court's attention a certificate issued by the Secretary-General of the United Nations determining that "the words which constitute the basis of plaintiffs' complaint in this case were spoken by the Special Rapporteur in the course of his mission", and that Mr. Param Cumaraswamy "is immune from legal process". The certificate reiterates Malaysia's legal obligation, under Section 34 of the Convention, to "be in a position under its own law to give effect to the terms of this Convention".

3. The Malaysian Government then issued its own certificate, which confirmed the Special Rapporteur's immunity, but provided for a qualified immunity, limited to statements "only" if they were made in the course of the performance of his mission.

4. On 28 June, 1997 the High Court of Malaysia rejected Mr. Cumaraswamy's petition, ruling that the certificate of the Secretary-General was merely an "opinion"; this ruling is now under appeal. Three other writs were then issued against Mr. Cumaraswamy, all relating to the original article. In light of the four suits currently pending against him, and the high financial risk involved, the Special Rapporteur has felt compelled to resign as executive partner of his law firm - which he founded - in Malaysia.

5. The approach taken by the Malaysian courts is also in sharp contrast to that of, for example, courts in the United States, which have routinely recognized the immunity of international organizations, their staff and officials, in cases arising from the presence of the United Nations Secretariat in New York and the Organization of American States Secretariat in Washington. 1/ By allowing its national courts to determine the scope of Mr. Cumaraswamy's immunity, the Malaysian Government is in breach of its obligation under the Convention to give effect to the rapporteur's immunity from any legal process in Malaysia.

6. The Convention gives the International Court of Justice exclusive authority over the settlement of any difference arising out of the implementation of the Convention: "[a]ll differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved ...". Under established principles of international law, it is for the International Court of Justice, and not the Malaysian courts, to resolve Mr. Cumaraswamy's situation.

7. Given the seriousness of this ongoing situation, the Lawyers Committee calls upon the Commission on Human Rights, and in particular on the States parties to the Convention on the Privileges and Immunities of the United Nations, to take immediate and appropriate steps to establish Mr. Cumaraswamy's immunity from any legal process in Malaysia.

Special procedures of the Commission on Human Rights

8. The actions against the Special Rapporteur on the independence of judges and lawyers raises serious concerns about a wider pattern of interference with the work of special rapporteurs and working groups of the Commission on Human Rights. Other incidents which occurred in 1997 were the non-cooperation of President Laurent Kabila with the United Nations human rights investigative

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1/ See, e.g., DeLuca v. United Nations Org., in which the court held that the United Nations and its officials enjoy "immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity ... Properly invoked immunity shields the defendant not only from the consequences of litigation's results, but also from the burden of defending themselves" [841 F. Supp. 531, 533 (S.D.N.Y. 1994), aff'd, 41 F.3d 1502 (2d Cir. 1994)]. See also, the court's comment in Broadbent v. Organisation of American States. "Denial of immunity opens the door to divided decisions of the courts of different member States passing judgement on the rules, regulations and decisions of international bodies. Undercutting uniformity ... would undermine the ability of the organization to function effectively." In this case, the court held that as the OAS had not waived its immunity, the plaintiff's claim had to be dismissed [628 F.2d (D.C. Cir. 1980)].

team and his personal attacks on Mr. Roberto Garretón, the Special Rapporteur on the Democratic Republic of the Congo, and the amendments made to the report of the Special Rapporteur on contemporary forms of racism, Mr. Maurice Glèlè-Ahanhanzo, as a result of Government pressure.

9. The Lawyers Committee for Human Rights emphasizes that the special procedures of the Commission on Human Rights play a crucial role in monitoring human rights situations around the world, calling public attention to human rights violations and preventing their further occurrence. The Commission on Human Rights has a responsibility to ensure that the special procedures experts enjoy full freedom and independence in giving effect to their respective mandates, guided by relevant resolutions and established practices among special rapporteurs and independent experts. In order to carry out their work independently and effectively, their immunity as United Nations experts must be fully protected.

10. The Lawyers Committee expresses great concern about two resolutions that were introduced during the fifty-third session of the Commission on Human Rights (E/CN.4/1997/L.86 and E/CN.4/1997/L.87), aimed at "rationalizing" the current special procedures system. If adopted in their current form, these resolutions would seriously undermine the independence and effectiveness of the special procedures system by requiring, for example, that special rapporteurs on mission "refrain from giving media publicity to their findings until these have been considered and deliberated upon by the Commission", and by instituting an unprecedented consensus requirement for the establishment of any country related mandate.

11. The Lawyers Committee for Human Rights believes that any review of the special procedures system should aim to strengthen, not weaken, the current system. In particular, we urge all States:

(i) To reiterate the importance of the independence and discretion of all experts in carrying out their mandate, as established by the Commission on Human Rights. This includes any public explanation of their mandate and activities, such as made during conferences and media interviews. States should guarantee the immunity from legal process of all experts on mission, as provided for in the Charter of the United Nations and the 1946 Convention on the Privileges and Immunities of the United Nations.

(ii) In appropriate circumstances, to invite experts to conduct on-site visits where they have indicated their interest in doing so. States should facilitate these missions and, in particular, allow unhindered access to any place of detention or imprisonment, any sites of alleged massacres or other human right abuses, as well as meetings with senior government officials, and confidential meetings with any detainee, NGO representative, victim or family member.

(iii) To implement fully the conclusions and recommendations of special procedures experts as expressed in their reports. States should cooperate with and respond to any communication by a rapporteur or working group on alleged violations and to requests for further

clarification. States should provide these experts with the results of any investigation, prosecution or conviction on communicated violations in a timely manner.

(iv) To request the Office of the United Nations High Commissioner for Human Rights to conduct a survey on the needs of special procedures experts, in particular as they relate to well-qualified assistance, research capacity, adequate resources and State cooperation.

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

Set of principles to combat impunity

1. The revised set of principles for the protection and promotion of human rights through the combating of impunity (E/CN.4/Sub.2/1997/20/Rev.1) submitted to the Commission on Human Rights by resolution 1997/28 of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities is an important contribution to the promotion and defence of human rights, but suffers from shortcomings and omissions, some of which are pointed out below.

I. OMISSION OF PRINCIPLES CONCERNING IMPUNITY IN TRANSBOUNDARY OR EXTRATERRITORIAL VIOLATIONS OF HUMAN RIGHTS

2. The revised set of principles proposed in the Special Rapporteur's report totally omits the question of impunity for transboundary or extraterritorial human rights violations committed by a State or its agents in the territory of another State through armed aggression, infiltration of agents to commit assassinations or terrorist attacks, promotion of coups d'état, etc.

3. Such violations generally go unpunished. The same applies to the personnel of foreign armed forces stationed in third States who commit them: by virtue of what is delicately termed "status of forces", they enjoy extraterritoriality and are not accountable to the courts of the host country. This form of impunity was tragically highlighted by the recent disaster caused by a United States military aircraft in Italy.

4. The Committee on Human Rights has sensibly said, in interpreting article 2 of the International Covenant on Civil and Political Rights, that:

> "... it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory" (Communication No. 52/1979, Selected decisions relating to the Optional Protocol, CCPR/C/OP/1).

5. In this regard, the Special Rapporteur's report omits the question of impunity for human rights violations committed against various peoples during colonial and neo-colonial wars. The report also fails to deal with the question of impunity for human rights violations committed during operations authorized by the Security Council (international violations of human rights, for example, in Somalia or during the Gulf War). Consequently, the report does not address the topic of reparation (moral or material) for victims of transboundary or international violations of human rights.

6. For these reasons, the following principles should be added to those already contained in the report:

(a) The principles set out in the set of principles and the principle of States' liability for internationally unlawful acts apply in cases of extraterritorial or transboundary violations of human rights;

(b) The said principles are also applicable to human rights violations committed in the course of operations performed or authorized by the United Nations. Such violations entail the liability of the United Nations, the States involved, the persons who commit them and/or the persons who authorize them or fail to prevent their commission. The United Nations, the States involved and the other responsible parties have a joint obligation to compensate the victims and/or their successors in title, and the international community must ensure that the guilty parties are brought to justice;

(c) The principle of territoriality should apply to offences committed by an alien, i.e., the suspected culprit should, save only in the event of diplomatic immunity or of the establishment of a permanent international criminal court, be tried before the courts of the State where the offence was committed.

II. OTHER PRINCIPLES THAT HAVE BEEN OMITTED AND SHOULD BE ADDED

7. The judiciary must be independent and impartial. There should be no special or "ad hoc" courts. The independence of the judiciary from the executive should be stated and guaranteed in States' fundamental laws and

respected in practice. The conformity of sentences with the law implies the conformity of sentences with the fundamental rules of international law in the sphere of human rights. The independence and impartiality of the judiciary should also be guaranteed through the publicizing of trials and sentences. Neither judges nor advocates should be subject to pressure, threats or persecution.

8. The office of the public prosecutor should be independent from the executive.

9. Efforts should be made to universalize and improve international rules, instruments and machinery. That means that:

(a) All States should sign and ratify the human rights covenants, protocols and conventions and should recognize the competence to receive complaints of committees given that function in the covenants;

(b) The Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights should be supplemented by optional protocols establishing procedures for the lodging of complaints;

(c) The existing procedures within the United Nations system and regional systems must be improved so as to ensure effective protection for human rights.

III. COMMENTS ON THE PRINCIPLES PROPOSED IN THE REPORT

10. Principle 1: In this Principle, add "and every individual" after "Every State". The right to the truth should extend to the circumstances of all human rights violations, not just systematic or gross violations or heinous crimes. Accordingly, the relevant section of the Principle should read: "which led to the violations of human rights" and the expressions "systematic, gross violations" and "heinous crimes" should be deleted.

11. Principle 2: There is not only a duty, but also a right to remember. In addition to the rejection of revisionist arguments relating to objectively verified historical facts, it includes the right to the investigation and publicizing of facts concealed or distorted by the official version of history. The following text should be added to this Principle:

> "The right to remember shall also be guaranteed. It consists in the right to investigate and publicize facts that have been concealed or distorted."

12. Principle 4: In order to avoid giving the impression that the State has a monopoly on adopting appropriate measures or that such measures can only be adopted if the judicial system is deficient, the following wording is proposed:

> "As priority measures to give effect to the right to the truth, efforts should be made to establish extrajudicial commissions of inquiry and to secure the preservation of, and access to the relevant archives. Such measures are not only obligations for the State, but also a right of civil society."

13. Principles 5 to 12: While these principles attach great importance to extrajudicial commissions of inquiry, they overlook two fundamental points that would enable such bodies to act effectively:

(a) The obligation for the State to make available to a commission all the existing documentation;

(b) The possibility of using the police to bring witnesses before a commission and the legal obligation on witnesses to testify.

These two matters should be covered in the principles concerning commissions of inquiry. Subparagraph (a) of Principle 9, which provides that the appearance of witnesses shall be voluntary, should, therefore, be deleted. If appearance was voluntary, it is highly unlikely that anyone suspected of having committed violations would appear before a commission of inquiry.

14. Principle 11: This principle gives commissions the power of making recommendations, an activity that would exceed the competence of a commission of inquiry and is more suited to grassroots organizations, political parties or State organs. Principle 11 should be deleted.

15. Principle 14: Archives should be accessible not only to victims and their families, but also to their legal representatives.

16. Principle 18: The final sentence of Principle 18 should be replaced by the following: "Any person or institution with reliable knowledge of the facts may initiate the proceedings by means of a complaint." There is no legal basis whatsoever for requiring an NGO to prove long-standing activity on behalf of the victim. In the case of a class action or of the public right of action, what counts is not the plaintiff's "curriculum vitae", but the seriousness, accuracy and credibility of the complaint.

17. Principle 22: Principle 22 (extraterritorial jurisdiction in domestic law) can be read as authorizing a country's courts to try an alien for offences committed outside the country even if there is no treaty establishing universal competence and even if the victim or author are not nationals of the State to which the court claiming competence belongs. Similarly, the Principle can be read as authorizing a State to abduct someone in foreign territory in order to try them itself, an idea espoused by the United States Supreme Court in its decision 91-712 of 15 June 1992 (Alvarez Machain case). That decision was severely criticized in a legal opinion rendered by the Inter-American Juridical Committee at the request of the Permanent Council of the Organization of American States. The Inter-American Juridical Committee held, inter alia, that the United States Supreme Court's decision authorized violation of fundamental rules and principles of international law, including that of respect for States' territorial sovereignty (see Human Rights Law Journal, vol. 13, No. 9-10, 10 November 1992, pp. 395 et seq.). The American Association of Jurists has submitted the Alvarez Machain case to the Inter-American Commission on Human Rights (AAJ v. United States). Consequently, Principle 22 should be completely reworded and should merely

speak of the possibility for States, when victims or authors of human rights violations are its own nationals, of establishing exceptions to the principle of territoriality in the application of criminal law.

18. Principle 23: It is suggested that, for the reasons set out in the commentary to Principle 32, the final phrase, concerning the irremovability of judges, should be deleted.

19. Principle 32: The principle of the irremovability of judges is one of the hallmarks of a State governed by the rule of law. It is not, however, an absolute principle: judges can be removed for specific reasons and according to procedures laid down in the Constitution and law. An international declaration of principles should not seek - on the basis of a non-existent principle of parallelism of forms - to correct one instance of arbitrariness by another. Principle 32 should, therefore, be deleted.

20. Principle 34: The obligation of reparation should be a joint obligation of the State and the direct author or authors of, and accomplices in or accessories to the violations and the right to seek reparation should be recognized to the victims and their successors in title. It is therefore suggested that these ideas should be expressly reflected in Principle 34.

Denial of economic, social and cultural rights as a result of the applications of sanctions

1. The realization of social, economic and cultural rights is the cornerstone of the process of development, and is characterized by economic growth and increased production and consumption of goods and services. These rights seek to ensure the well-being of individuals and groups, improvement in living standards, education, health care and employment. Together these factors contribute to the dignity of the human person. The preamble of the Declaration of the Right to Development adopted by the General Assembly of the United Nations in 1986 describes development as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom".

2. The World Council of Churches has long held the position that the rights elaborated in the Covenants on Economic, Social and Cultural Rights and Civil and Political Rights are indivisible and fundamental and should guide policy and decision-making processes of the United Nations including those of the Security Council, in relation to the applications of sanctions.

3. The post-Cold War period has witnessed the emergence of the Security Council as a major player in conflict mediation, where sanctions, because of their non-military character, have become a key instrument for peaceful resolution of conflicts. Nevertheless, many questions remain about their impact and efficacy. Foremost among them: what are the implications of sanctions on the poor and vulnerable in the target country? How do sanctions impact on the economic, social and cultural rights of the population in the target country?

4. Against this background, the World Council of Churches has serious concern about the application of sanctions in Iraq. These arise out of our regular contact with the people of Iraq as a result of the humanitarian relief assistance programmes of the Middle East Council of Churches that are carried out in close cooperation with the Iraqi Red Crescent Society and the United Nations humanitarian agencies in Iraq. A delegation of the World Council of Churches recently visited Iraq (17 to 27 January 1998) to study the effects of sanctions on the civilian population. It came to the following conclusions:

(a) The application of economic sanctions on Iraq has resulted in serious violations of human rights of large sections of the Iraqi population by denying them the rights to adequate food, clothing, housing, medical care, education, social services and employment.

(b) Health and sanitation are in a critical state. There has been a dramatic increase in mortality, morbidity and malnutrition, especially among children and other vulnerable groups. The application of sanctions has prevented repairs of basic infrastructure destroyed during the 1991 Gulf War. It has also made it impossible for the State to maintain adequately water, sanitation, and electric power systems essential to public health. This together with the degradation of schools, hospitals and other medical facilities, arable land, human resources and the general economy, have combined to create a grim scenario.

(c) The mechanisms for implementation of the sanctions regime have often created obstacles in the supply of humanitarian relief assistance to the detriment of the Iraqi people. The main problem, however, remains the seven-year long application of sanctions whose negative effects have not been substantially altered by the "Oil for Food" concession of the Security Council.

(d) Attendance in primary schools has dropped by 25 per cent (UNICEF) as children leave school to work at odd jobs, or beg on the streets. The number of teachers at schools have decreased. Schools lack in basic supplies such as pencils and papers, notebooks, blackboards and chalk. Many have broken toilets, with no access to any water. Many children come to school hungry as there are no supplementary feeding programmes. The educators are concerned that chronic malnutrition has permanently impaired the cognitive ability of primary school age.

(e) The bombing campaign of the Gulf War extensively damaged the electrical power stations and water treatment plants, particularly in South Iraq. The intermittent electric supply, combined with shortage of pumps, spare parts and reagents has been a major problem in the country. Lack of safe drinking water, combined with damaged sewage systems have resulted in increases in food and water-borne diseases such as typhoid fever, polio and hepatitis A. Typhoid fever has become a major health problem, with more than 27,000 cases reported in 1997 according to United Nations sources.

5. Sanctions if improperly conceived and monitored result in inflicting cruel and degrading punishment on the civilian population. The Central Committee of the World Council of Churches out of its concern for these negative aspects of sanctions commissioned a study in 1995. The study pointed out that economic sanctions are coercive by nature and can result in economic violence against whole peoples. It therefore developed its own criteria and guidelines for application of sanctions. (These are available for distribution on request.)

6. In adopting these criteria and guidelines for application of sanctions, the World Council of Churches believes that policies and actions of all institutions must be judged according to their impact on the poor, innocent and the weak. Sanctions regime must be designed in a way that will limit suffering of persons affected within the country whose policies they may be powerless to change.

7. We accordingly urge the Commission on Human Rights to:

(a) Request the High Commissioner for Human Rights to monitor the application of sanctions with a view to ensuring adequate promotion and protection of social, economic and cultural rights.

(b) Call for formation of a working group to develop criteria and guidelines, for imposition and application of sanctions, that ensures promotion and protection of human rights, and to submit its conclusions to the Security Council.